IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION 3377 OF 2003
IN
FIRST APPEAL (ST) NO.29044 OF 2003

The New India Assurance Co. Ltd. ...Applicant

Versus

Anandrao Hanumant Kadam & Anr. ...Respondents

Shri Rajesh Behere i/by Smt M.R.Behere for the Applicant.
Shri Dilip Bodke for the Respondent No.1.

CORAM : A. S. OKA, J.
DATE : JANUARY 08, 2007.

P.C.:

1. Shri Behere appearing for the Applicant states that entire amount payable under the Award has been deposited and stay writ has been received duly certified.

2. Heard Shri Behere for the Applicant and Shri Bodke for the first Respondent (original claimant). In an Application under section 166 of the Motor Vehicles Act, 1966 the Tribunal has passed an Award against the Applicant and the second Respondent (owner of the vehicle). The defence of the Applicant in the claim is that the original Applicant was travelling as a gratuitous passenger in the dumper. Notwithstanding the defence, the Tribunal has passed an Award against

the Applicant.

3. The original claimant will have to be permitted to withdraw the amount of compensation subject to final outcome of the Appeal. In case the Applicant Insurance Company succeeds in the Appeal, the Award against the insured will remain and therefore, the Applicant Insurance Company can always recover the amount from the insured.

4. Hence, Civil Application is disposed of by passing following order:

(i) The first Respondent- original Complainant will be permitted to withdraw the amount deposited by the Applicant subject to final outcome of the Appeal.

(ii) It is clarified that in case the Applicant succeeds in the Appeal, apart from other remedies, the Applicant will be entitled to recover the amount of compensation from the insured.

(iii) Civil Application is disposed of in above terms.

JUDGE